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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/698,243

10/31/2003

Patrick J. Treado

E2079-00012

2411

41396

7590

10/01/2007

DUANE MORRIS LLP

IP DEPARTMENT

30 SOUTH 17TH STREET

PHILADELPHIA, PA 19103-4196

EXAMINER

PRITCHETT, JOSHUA L

ART UNIT

PAPER NUMBER

2872

MAIL DATE

DELIVERY MODE

10/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No. :

10/898,243

Applicant(s)

TREADO ET AL.

Examiner

Joshua L. Pritchett

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date: 9/07
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

This action is in response to Amendment filed September 14, 2007. Claim 1 was amended as requested by applicant.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 9, 10, 13, 14, 17, 18, 21, 22, 25, 26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Batchelder (US 5,689,333) as evidenced by Rigler (US 2002/0114224) in view of Bynre (US 6,724,950).

Regarding claims 1, 5, 9, 13, 17, 21, 25 and 29, Batchelder teaches non-destructively illuminating a sample (4) with a light of a first wavelength (Fig. 1) the imaging the sample using the light emitted from the sample at a second and third wavelength different from one another (col. 4 lines 49-55; Fig. 1) and creating a calculated image of the sample from the first and second image (col. 10 lines 52-65). The electronic tunable filter of Batchelder would allow for the image to be obtained at different wavelengths. Batchelder teaches the use of fluorescent

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microscopy which Rigler states can be used to examine forensic samples (para. 0002). All the different claimed samples are listed in the current specification as functional equivalents (current specification para. 0003). Batchelder lacks reference to an electro-optical tunable filter. Bynre teaches the use of tunable filters without movable parts to identify chemicals (col. 1 lines 17-48; abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Batchelder invention include the filter of Bynre for the purpose of more accurately filtering the light (Bynre col. 1 lines 17-48).

Regarding claims 2, 6, 10, 14, 18, 22, 26 and 30, Batchelder teaches correcting the calculated image using signals extracted from at least one of the first and second images the signals extracted from a subset of pixels from at least one of the first and second image pixels (col. 10 lines 48-51). Batchelder reduces the background noise of a sample.

Claims 3, 4, 7, 8, 11, 12, 15, 16, 19, 20, 23, 24, 27, 28, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Batchelder (US 5,689,333) as evidenced by Rigler (US 2002/0114224) in view of Bynre (US 6,724,985) further in view of Treado (US 2002/0113210).

Batchelder teaches the invention as claimed but lacks reference to taking images outside of the area of interest. Treado teaches the subset of pixels is outside the area of interest and subtracting the background signal provided by the light of the wavelength from outside the area of interest from the first and second image (para. 0078). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Batchelder invention include the noise reduction method taught by Treado for the purpose of allowing the observer to focus solely on the object to be examined.

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### *Response to Arguments*

Applicant's arguments, see Amendment, filed September 14, 2007, with respect to the rejection(s) of claim(s) 1 under Batchelder have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bynre. Applicant argued Batchelder failed to teach an electro-optical filter. The Bynre reference is added to teach this type of filter.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua L. Pritchett whose telephone number is 571-272-2318. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on 571-272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Joshua L Pritchett  
Examiner  
Art Unit 2872